IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION NO. 438 OF 2005

Association of Engineering Workers)
252, Janata Colony, Ram Narayan)
Narkar Marg, Ghatkopar (East))
Mumbai 400 077) ....Petitioner.

V/s

Air Works India Engineering)
Pvt. Ltd., International Airport)
Santacruz (East), Mumbai 400029) ...Respondent.

Mr. N.M. Ganguli for the Petitioner.

Mr. A.D. Shetty with Ms. Rita K. Joshi for the Respondent.

CORAM: V.M. KANADE, J.
DATE : 21st April, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of Petitioner and the learned Counsel appearing on behalf of Respondent.

2. By this Petition, Petitioner is challenging the Award dated 13/04/2004 passed by the Industrial Tribunal in Reference (IT) No.97 of 1994.

3. Brief facts which are relevant of the purpose of deciding this Petition are as under:-

FACTS:

4. Petitioner is a Trade Union registered under Trade Unions Act, 1926 and it represents the workmen employed in the undertaking of Respondent. Some time in the year 1980-81, there were some disputes between the Respondent and workmen and negotiations were going on between two parties. While these negotiations were going on, management terminated the services of 21 workmen and the reason which was given by the management was that they were retrenched from service for want of work.

5. The Union, Petitioner herein, in order to register its protest against the said illegal action on the part of management, gave notice of strike dated 20/07/1981. It is the case of Petitioner that this strike was ultimately withdrawn on 10/02/1989.

6. When the employees reported to Respondent - Company for joining their services, they were informed that they were dismissed from service. Petitioner, therefore, raised industrial dispute, demanding reinstatement with continuity of service with full back wages. The State Government also refused to entertain the dispute and, therefore, Writ Petition was filed in this Court and in the said Petition a direction was given to the State Government to refer the dispute for adjudication. Accordingly, a reference was made by the Government and, thereafter, Union filed its Statement of Claim. Respondent filed its Written Statement and, finally, award was passed whereby reference was dismissed.

SUBMISSIONS:

7. Mr. Ganguli, the learned Counsel appearing on behalf of the Petitioner submitted that the Tribunal had erred in dismissing the reference and had committed an error of law which was apparent on the face of record and misconstrued the provisions of law and misapplied the same to the facts

and did not consider the material which was on record. He submitted that the Tribunal erred in holding that the inquiry was held by Respondent and that proper procedure had been followed by the management in holding the said inquiry. He submitted that the Tribunal had erred in holding that charge-sheet had been served on the employees and on the Union. He submitted that continuation of strike by workmen did not attract the provisions of section 24(1) and that the provisions of section 22(1)(d) were not applicable to the Respondent since it was not public utility service. He relied on the following judgments in support of his submissions:-

(1) 1979 LIC 290
[G.T. Lad and Ors Vs. Chemicals and Fibres India Ltd.]

(2) 1988 I CLR 38
[Gaurishankar Vishwakarma Vs. Eagle Spring Industries
Pvt. Ltd. & Ors.]

(3) AIR 1960 SC 893
[Management of Kairbetta Estate Vs. Rajamanickam]

(4) AIR 1987 SC 1353
[Collector Land Acquisition Vs. Mst Katiji]

(5) 1980 LIC 1004
[Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha and Others.]

8. Mr. Shetty, the learned Counsel appearing on behalf of Respondent, on the other hand, submitted that the Industrial Court had, after appreciating the evidence on record, passed the impugned award and there was no reason for this Court to substitute its own opinion to the opinion and decision which was taken by the Court below.

FINDINGS AND CONCLUSION:

9. I have heard both the Counsel at length and perused the award as also the Statement of Claim and the evidence on record. In the present case, it is an admitted position that after 21 workmen were retrenched by Respondent, the Union issued a notice of strike dated 20/7/1981 and this notice of strike was withdrawn on 10/02/1989. It is an admitted position that during the intervening period, no talks of settlement were held between the Union and the management. Neither Union nor workmen had entered into any correspondence in respect of the alleged strike. On the contrary, material which is on record indicates that a show cause notice was issued by the management against these

employees when they failed to report to work and that after holding proper inquiry they were dismissed from service on and from 10/12/1981 and letters to that effect were sent to the workmen and copies of the same were sent to the Union and their dismissal had attained finality since neither workmen nor Union had raised any dispute challenging the said dismissal and hence there was no relation of employer and employee between the Company and the said workmen. The management has, in support of its case, has produced voluminous evidence on record through its witnesses and has produce the entire inquiry proceedings. The management has, through its witnesses, produced letters which were sent to the workers by registered post which were received by them. The letters were also sent to the Union which were received by the Union. The documents at Exhibits C-12, C-13, C-14, C-15, C-16, C-17, C-18, C-19 and C-20 clearly disclose that from time to time letters were sent to the workers and to the Union and they were aware of the inquiry which was initiated against these workmen. The Union, though it was aware about these proceedings since it had received the said letters, has suppressed this fact in

their Statement of Claim. The documentary evidence which is brought on record by the management clearly discloses that the Union and the workers were aware of the proceedings and, yet, they suppressed this fact in the Statement of Claim and in the evidence which which was adduced by them before the Tribunal. The Tribunal has considered this material on record and has, therefore, rightly come to the conclusion that the alleged strike by the workmen was illegal and, consequently, the Tribunal held that the workmen at serial Nos. 1 and 7 had abandoned their services. It also observed that the workmen at Serial Nos. 1 and 7 were material witnesses. However, they were not examined. The ratio of the judgments on which reliance is placed by the learned Counsel for the Petitioner is not applicable to the facts of the present case.

10. I do not see any reason to interfere with the award passed by the Tribunal. There is no merit in the submissions made by the learned Counsel appearing on behalf of the Petitioner. Writ Petition is accordingly dismissed. Rule is discharged with no order as to costs.

(V.M. KANADE, J.)